

Feb 18, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RUTH ANN CONDE CHEESMAN,

Plaintiff,

v.

ELLENSBURG SCHOOL DISTRICT,

JOHN GRAF, TIA ROSS, NANCY

WILBANKS,

Defendants.

No. 1:18-cv-03218-SAB

**ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT**

Before the Court is Defendants' Motion For Summary Judgment ECF No. 31. The motion was heard without oral argument. Plaintiff is representing herself and *in forma pauperis*; Defendants are represented by James Baker.

**Motion Standard**

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The moving party has the initial burden of showing the absence of a genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

1 If the moving party meets its initial burden, the non-moving party must go beyond  
2 the pleadings and “set forth specific facts showing that there is a genuine issue for  
3 trial.” *Anderson*, 477 U.S. at 248.

4 In addition to showing there are no questions of material fact, the moving  
5 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*  
6 *Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is entitled  
7 to judgment as a matter of law when the non-moving party fails to make a  
8 sufficient showing on an essential element of a claim on which the non-moving  
9 party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving party  
10 cannot rely on conclusory allegations alone to create an issue of material fact.  
11 *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

12 When considering a motion for summary judgment, a court may neither  
13 weigh the evidence nor assess credibility; instead, “the evidence of the non-movant  
14 is to be believed, and all justifiable inferences are to be drawn in his favor.”  
15 *Anderson*, 477 U.S. at 255.

### 16 **Background Facts**

17 The following facts are taken in the light most favorable to Plaintiff, the  
18 non-moving party.

19 On December 7, 2016, Defendant Tia Ross, a teacher of Defendant  
20 Ellensburg School District, noted that L.C., Plaintiff’s daughter, had bruising on  
21 her face that caused a black eye. L.C. said that she fell asleep in a chair and hit the  
22 chair. She later relayed that her father got mad at her and hit her. Ms. Ross sent  
23 L.C. to the school nurse. The school nurse gave L.C. an ice pack for her eye.

24 Defendant John Graf, principal at L.C.’s elementary school, Lincoln  
25 Elementary School, took three photographs of L.C.’s eye. L.C. told Mr. Graf that  
26 her dad got angry and hit her. She also mentioned that her big sister had gotten into  
27 trouble as well because her sister had brought some ice to L.C. in L.C.’s bedroom.  
28 L.C. stated that her father “smacked” her big sister for bringing the ice to L.C.

1 School counselor Nancy Wilbanks<sup>1</sup> went to see L.C. She was alarmed by the  
2 injury. L.C. first told her that her injury was caused by a fall but later told Ms.  
3 Wilbanks that her dad got mad and hit her. Ms. Wilbanks notified Child Protective  
4 Services (CPS) of the bruising on L.C.'s face. CPS responded that if school  
5 officials were fearful for L.C. to go home that day, they should contact law  
6 enforcement. Mr. Graf contacted law enforcement and the school resource officer  
7 arrived shortly before school was dismissed that day. L.C. was permitted to go  
8 home with her father because he was already at the school to pick L.C. up.

9 After Tabitha Snyder, investigator for CPS, learned that L.C. was going  
10 home with her father, she called law enforcement. Detective Jennifer Margheim of  
11 the Ellensburg Police Department received the intake from CPS. They decided to  
12 interview L.C. the next day.

13 On December 8, 2018, Detective Margheim and Ms. Snyder interviewed  
14 L.C. at the school and took statements from Ms. Ross, Mr. Graf, and Ms. Osier.  
15 L.C. gave inconsistent statements and said that she was afraid of her father. As a  
16 result, Detective Margheim took L.C. into protective custody. Plaintiff's older two  
17 children, I.C. and V.C., were interviewed by law enforcement. They were also  
18 taken into protective custody and placed in foster homes. Dependency petitions  
19 were filed, but ultimately, they were dismissed.

### 20 **Procedural History**

21 Plaintiff is representing herself in this matter and is proceeding *in forma*  
22 *pauperis*. On January 8, 2019, the Court reviewed the allegations contained in her  
23 Complaint and concluded that Plaintiff alleged sufficient facts for her § 1983  
24 claims to survive 28 U.S.C. § 1915 review, but dismissed Claims 3, 4, 7, 8, 10, 12  
25 and 13 because they failed to state a claim. ECF No. 7. Defendants now seek  
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27 <sup>1</sup> Nancy Wilbanks is now known as Ms. Osier. For purposes of this Order, the  
28 Court will refer to Ms. Osier as Ms. Wilbanks.

1 summary judgment on the remaining claims. ECF No. 31.

## 2 **Analysis**

### 3 **A. Constitutional Claims**

4 To prevail on a civil rights claim, a plaintiff must prove both that (1) a  
5 person acting under color of state law committed the conduct at issue, and (2) the  
6 conduct deprived the plaintiff of some right, privilege, or immunity protected by  
7 the Constitution or laws of the United States. 42 U.S.C. § 1983.

#### 8 **1. Conspiracy**

9 Although Plaintiff alleges that school officials conspired with CPS to take  
10 her children from her custody and place them in foster care in violation of her  
11 Constitutional rights, there is nothing in the record to support this allegation. *See*  
12 *Celotex Corp*, 477 U.S. at 325 (Because Plaintiff would bear the burden of proof  
13 on the relevant issues at trial, defendants need only show “that there is an absence  
14 of evidence to support the nonmoving party’s case.”).

15 To prevail on a claim for conspiracy to violate one’s constitutional rights  
16 under § 1983, the plaintiff must show specific facts to support the existence of the  
17 claimed conspiracy. *Burns v. Cnty. of King*, 883 F.2d 819, 821 (9th Cir. 1989). The  
18 elements to establish a claim for conspiracy under § 1983 are: (1) the existence of  
19 an express or implied agreement among the defendants to deprive her of her  
20 constitutional rights, and (2) an actual deprivation of those rights resulting from  
21 that agreement. *Ting v. United States*, 927 F.2d 1504, 1512 (9th Cir. 1991). In  
22 addition, there must be an agreement or meeting of the minds to violate her  
23 constitutional rights. *Woodrum v. Woodward Cnty, Okl.*, 866 F.2d 1121, 1126 (9th  
24 Cir. 1989). A formal agreement is not necessary; an agreement may be inferred  
25 from the defendant’s acts pursuant to this scheme or other circumstantial evidence.  
26 *See United States v. Clevenger*, 733 F.2d 1356, 1358 (9th Cir.1984). To the extent  
27 that Plaintiff’s claims are based on the decision to place her children in foster care  
28 or be examined by a physician, there is no evidence in the record that the School

1 District was involved in any way. Rather, the decision to interview L.C. and the  
2 decision to place L.C. and her siblings into protective custody was made by  
3 Detective Margheim, while Ms. Snyder initiated the dependency proceedings.  
4 While they relied on statements made by the school officials, these statements  
5 alone do not provide evidence of an agreement to violate Plaintiff's constitutional  
6 rights. A reasonable jury would not find that school officials conspired to violate  
7 Plaintiff's constitutional rights.

## 8 **2. First, Fourth and Fourteenth Amendment**

9 There is nothing in the record from which a reasonable jury could find that  
10 Defendants violated Plaintiff's First Amendment, Fourth Amendment or  
11 Fourteenth Amendment rights.<sup>2</sup>

12 A reasonable jury would not find that Plaintiff's due process rights were  
13 violated. Based on the inconsistent statements of the children and inconsistent  
14 explanation given for L.C.'s bruised eye, a reasonable jury could only reach one  
15 conclusion, namely that the District was required to contact CPS or law  
16 enforcement to report potential abuse or neglect.

17 A reasonable jury would not find that Defendants tampered with the  
18 evidence or made false reports, allegations or accusation without evidence of abuse  
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22 <sup>2</sup> To the extent Plaintiff is bringing these claims to vindicate her children's First,  
23 Fourth and Fourteenth Amendment rights, she is unable to do so in her *pro se*  
24 capacity. Also, she does not have standing to bring any Fourth or Fourteenth  
25 Amendment claims on behalf of her children. *See e.g. Moreland v. Las Vegas*  
26 *Metro*, 159 F.3d 365, 369 (9th Cir. 1998)(noting that while a person has standing  
27 to challenge the seizure of his or her own person, a person does not have standing  
28 to vicariously assert the Fourth Amendment rights of another person.)

1 to the children. There is no dispute that L.C. had a bruised eye.<sup>3</sup> Likewise, there is  
2 no dispute that the children gave inconsistent statements. A reasonable jury would  
3 only come to one conclusion, that Defendants did not tamper with the evidence or  
4 make false reports.

5 Finally, a reasonable jury would not find that Plaintiff's constitutional rights  
6 were violated when school officials asked L.C. about the bruising around her eye.  
7 Even if this were a constitutional violation, Defendants would be entitled to  
8 qualified immunity as there is no clearly established law addressing this issue. *See*  
9 *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

### 10 **3. Monell Liability**

11 In her deposition, Plaintiff faults the school officials for calling CPS prior to  
12 calling law enforcement as a violation of the District's policy. Even if officials did  
13 not follow the policy to the letter, Plaintiff's *Monell* claim fails because neither of  
14 these actions or policies—calling CPS first or calling law enforcement first—are  
15 unconstitutional. Calling CPS did not violate Plaintiff's constitutional rights. In  
16 any event, CPS did not become involved until after law enforcement appeared at  
17 the school.

## 18 **B. State Law Claims**

### 19 **1. Intentional Infliction of Emotional Distress**

20 Based on the record before the Court, no reasonable jury could find for  
21 Plaintiff on her Intentional Infliction of Emotional Distress claims. There is no  
22 evidence in the record that Defendants took any extreme and outrageous conduct  
23 that intentionally or recklessly inflicted emotional distress. Defendants simply gave  
24 statements to law enforcement and to CPS. These statements were not outrageous  
25 nor were they fabricated. Defendants reported that L.C. had a bruise near her eye,  
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27 <sup>3</sup> Plaintiff disagrees that L.C.'s father hit her, but she does not dispute that L.C. had  
28 bruising around her eye.

1 and that L.C. gave inconsistent statements regarding the injury. Plaintiff has not  
2 introduced any evidence that L.C. did not give such statements or that she did not  
3 have a bruised eye. There is no evidence in the record that Defendants acted with  
4 malice toward Plaintiff.

## 5 **2. Loss of Consortium**

6 Plaintiff's loss of consortium claim fails as a matter of law because she is the  
7 person who is claiming injury, and because she is a non-lawyer representing  
8 herself, she is unable to bring claims on behalf of her spouse or children.

## 9 **3. Gross Negligence**

10 Plaintiff alleges that Defendants were grossly negligent when the school  
11 nurse placed an ice pack on L.C.'s face. She maintains this resulted in the severe  
12 worsening of L.C.'s bruise. She accuses Defendants of contaminating the eye area.  
13 A reasonable jury would not find that Defendants were grossly negligent in placing  
14 an ice pack on L.C.'s bruise. There is nothing in the record to support Plaintiff's  
15 assertions that the ice pack worsened L.C.'s condition or that placing of the ice  
16 pack caused further injury.

## 17 **4. Willful Misconduct**

18 Willful or wanton conduct is technically not a separate cause of action, but a  
19 level of intent that negates certain defenses that might be available in an ordinary  
20 negligence action. *See Rodriguez v. City of Moses Lake*, 158 Wash. Apo. 724, 729  
21 (2010). Washington courts have not recognized such conduct as a separate cause of  
22 action. *Id.*

## 23 **Conclusion**

24 At this stage of the proceeding, Plaintiff must do more than rely on  
25 assertions and speculations. She cannot simply rely on what her Complaint says to  
26 defeat summary judgment. *See* ECF No. 33 (Notice to *Pro Se* Litigants of the  
27 Summary-Judgment Rule Requirements). Plaintiff has failed to present evidence  
28 from which a reasonable jury could find that Defendants violated her constitutional

1 rights, or did anything wrong when they called CPS and notified law enforcement  
2 when L.C. came to school with bruising around her eye, and gave inconsistent  
3 statements about how she got her injury.

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5 Accordingly, **IT IS HEREBY ORDERED:**

- 6 1. Defendants' Motion For Summary Judgment ECF No. 31, is  
7 **GRANTED.**  
8 2. Plaintiff's Motion to Strike Defendants' Motion for Summary Judgment,  
9 ECF No. 40, is **DENIED.**  
10 3. The District Court Executive is directed to enter judgment in favor of  
11 Defendants and against Plaintiff.

12 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
13 forward copies to Plaintiff and counsel, and **close the file.**

14 **DATED** this 18th day of February 2020.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive, flowing style.

20 Stanley A. Bastian  
21 United States District Judge  
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